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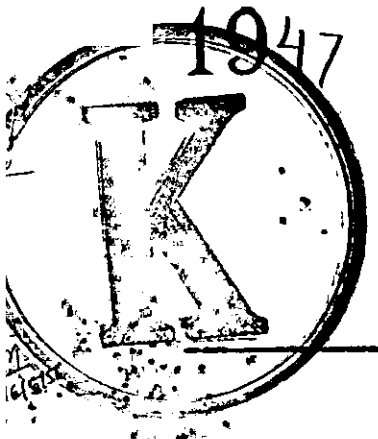

File No. University II/47

Legal DEPARTMENT

B BRANCH

Subject:—

Rules and Notifications

under

The Bombay University Act, 1928

File. No. University II/47
Stl. Sectt. Slip 24 B e.

116-B.

C O U R T S.

* Legal Department File No. University XX/47.

Sr. No.	Compilation No.	Subject.	Pages.
		The Bombay University Act, 1928.	
1	U.D. to Adv.Gen. No.5277 dt.27-7-46. Adv. Genl's No.61 dated 21-12-46 and U.O. to U.D.No.133 dated 6-1-47.	Sec. 18 — Opinion of the Advocate General — Powers of the Senate formed under.—	1 - 6. (P.5 not copied)

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15/1/48

Office of the R.L.A.

Statement of the Case.

In 1943 the University of Bombay proposed an amendment to Statute No. 203 whereby power was given to the Syndicate to frame Ordinance for matters falling within the purview of clause (kk) of Section 33(2) of the Bombay University Act 1928. In the opinion of the R.L.A. the Statute was ultravires of the Act. The reasons which led the R.L.A. to consider the Statute ultravires are these: Before Section 35 of the Bombay Universit Act was amended by Bombay Act 12 of 1928 it gave power to the Syndicate to frame Ordinances for prescribing conditions to be complied with by schools desiring recognition for the purpose of sending up pupils as candidates for the Matriculation Examination and the conditions to be complied with by candidates for the Matriculation Examination, whether sent by recognised schools or not. This power was given by clause (c) of sub-section (1) of Section 35. As it was found that the provisions gave the Syndicate control over the policy of secondary education which was not intended, it was decided to amend Section 35 so as to transpose the provisions in clause (c) of sub-section (1) of Section 35 to Section 33(2) thereby giving the power to the Senate to make Statutes with regard to the matters mentioned in the said clause. In R.L.A.'s opinion as the Act now stands it is only the Statutes which can provide for matters falling within the purview of clause (kk) of Section 32(2) and no Ordinances can be framed for the purpose . It is true that under Section 18(2) (i) the Senate can delegate its powers of providing for matters mentioned in clause (kk) of Section 33(2) to the Syndicate but since under Section 33 the Senate itself cannot exercise that power except by framing a Statue, that power cannot be delegated to the Syndicate unless the power to frame a Statue in the matter is also delegated to the Syndicate.unless In his letter of 22nd March 1946 at page 51 ante the Registrar of the University contends that after the Senate delegates its powers to the Syndicate the Syndicate can by virtue of the provisions of Section 35(1) (v) of the Act exercise the delegated powers only by means of Ordinances and not by Statutes. Section 35 (1) (v) of the Act no doubt empowers the Syndicate to make Ordinances generally for all matters which by the Act or by the Statutes may be provided for by the Ordinances and all matters for which provision is in the opinion of the Syndicate necessary for the exercise of the powers conferred or the performance of the duties imposed by the Act or the Statutes. But the Act does not —

~~not~~ provide for making of Ordinances for any of the matters referred to in clause (kk) of Section 33(2) and Statute No. 203 which requires the Syndicate to frame Ordinances for such matters is, as already pointed out ultravires and of no effect. The position thereof, ~~is~~ see in that if the Senate delegates its power under clause (KK) of Section 33(2) to the Syndicate the power which the Syndicate thereby gets in theory to make Statutes in the matter, for, that is the power which is vested in the Senate under Section 33. In view of the conflict of view between the University of Bombay and the B.I.A. the Advocate General is requested to give his opinion in the matter.

Remembrancer of Legal Affairs.

U.R. to Advocate General, Bombay, No. 5277, dated the 27th July, 1946.

GNT/15.5.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 21st December 1946.

V. B. to the Advocate General, Bombay -
No. 5277 dated the 27th July 1946.

OPINION.

By virtue of Section 18 of the Bombay University Act, the Senate has been given various powers as the supreme governing body; some of which are more particularly defined in Sub-Clause.

2. Among these powers is the power to delegate, any of its powers to such authority or authorities as the Senate may deem fit. Accordingly it is open to the Senate to delegate all its powers to the Syndicate. The Senate, for delegating any powers would have to frame a statute expressly delegating the specific power to the syndicate, and it is not enough for the senate ---- merely to request the Syndicate to do some particular thing. Merely to make a request would not be, in my opinion, a delegation of a power. Once the Senate has made a delegati the matter delegated falls within the powers exercisable by the Syndicate, having regard to Clause 2 of Section 21 which enable the Syndicate to "exercise such other powers and perform such other duti as may be conferred or imposed upon it by the Act or by the statutes"

The question really is, whether a delegated power should be carried out by the Syndicate by a Statute or by an Ordinance. It is true that one of the powers conferred under Section 18(2) is to make statutes, and if one looked at Section 18 alone, it could be said t the Senate could, by reason of Section 18(2) (8), even delegate to t Syndicate the power to make statutes ---- generally or with referen to any duty which the Senate may have delegated to it, But Section 18 has to be read in the light of Sec. 34 & 35 of the Act. Sections 34 and 35 appear to me to indicate that the power to make statutes is only in the Senate and the power to make and frame Ordinances is only in the Syndicate. In other words, the Senate onl can legislate by means of statutes; and the Syndicate may act only by Ordinance. The opening words of Section 35 "subject to the provisions of this Act and the statutes" are words of limitation on the right of the Syndicate to frame Ordinances and not words which enable the Syndicate to frame statutes. They do not contemplate the

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the power of making statutes being delegated s to the Syndicate but rather some limitation upon the power of the Syndicate to frame Ordinances. Consequently, I am unable to agree with the Remembrancer of Legal Affairs that if the Senate delegates its powers under Clause XX of Section 33(2) to the Syndicate, the Syndicate thereby gets a power to make statutes in the matter. The Syndicate can —— have no more power to frame a statute than the Senate can —— have power to frame an Ordinance. I am of opinion that the attitude taken up by the University is more correct. I have seen the opinion of Sir Kenneth N. I may given on an earlier occasion but I do not think that, that opinion touches the point now in issue.

Sd/-

Advocate General

Gnt/15.5.

Office of the S.L.A.S.

A copy of the Advocate General's opinion who was consulted in the matter together with a Statement of the Case is forwarded herewith.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.O.R. to S.D. No. 133 dated the 6th January 1947.

SIR/15.5.